UNIVERSITY OF CALIFORNIA

CLOUD COMPUTING SERVICES AGREEMENT TEMPLATE

UC Technology Acquisition Support (TAS) Group
http://www.ucop.edu/tas/welcome.html

December 8, 2011

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Template “Legend”:
Highlighted language is variable/changeable information to be entered as appropriate to the specific use case.

Red, italicized text is to provide instructions or other additional information regarding a particular clause. All italicized text should be removed before agreement is shared with any Supplier.

RED, CAPITALIZED TEXT IS TO INDICATE THAT AGREEMENT SPECIFIC DATA IS TO BE ENTERED IN PLACE OF THIS TEXT.
UNIVERSITY OF CALIFORNIA
CLOUD COMPUTING SERVICES AGREEMENT

This Cloud Computing Services Agreement ("Agreement"), is effective [MONTH] [DATE], [YEAR] ("Effective Date"), and is by and between [SUPPLIER NAME] ("Supplier" or "Contractor"), having an office for notices at [STREET ADDRESS], [CITY], [STATE] [ZIP CODE], and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("University"), a California Constitutional corporation, located at [STREET ADDRESS], [CITY], [STATE] [ZIP CODE].

INTENDING to be legally bound, Supplier and University agree that the following terms and conditions will apply to the services provided under this Agreement, including the following which are incorporated by reference: [LIST PERTINENT DOCUMENTS TO INCORPORATE BY REFERENCE HERE].

1. DEFINITIONS

Whenever used in this Agreement, any schedules, exhibits, or addenda to this Agreement, the following terms shall have the meanings assigned below. Other capitalized terms used in this Agreement are defined in the context in which they are used.

1.1 "Agreement" means this Cloud Computing Services Agreement between University and Supplier, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.

1.2 “Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

1.3 “Class 1 Error” means any error that renders the Services unusable for its intended purpose.

1.4 “Confidential Information” means any information that a disclosing party treats in a confidential manner and that is marked “Confidential Information” prior to disclosure to the other party. Confidential Information does not include information which: (a) is public or becomes public through no breach of the confidentiality obligations herein; (b) is disclosed by the party that has received Confidential Information (the "Receiving Party") with the prior written approval of the other party; (c) was known by the Receiving Party at the time of disclosure; (d) was developed independently by the Receiving Party without use of the Confidential Information; (e) becomes known to the Receiving Party from a source other than the disclosing party through lawful means; (f) is disclosed by the disclosing party to others without confidentiality obligations; or (g) is required by law to be disclosed.
1.5 “Data” means all information, whether in oral or written (including electronic) form, created by or in any way originating with University and End Users, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with University and End Users, in the course of using and configuring the Services provided under this Agreement, and includes University Data, End User Data, and Protected Information.

1.6 “Data Compromise” means any actual or reasonably suspected unauthorized access to or acquisition of computerized Data that compromises the security, confidentiality, or integrity of the Data, or the ability of University to access the Data.

1.7 “Documentation” means, collectively: (a) all materials published or otherwise made available to University by Supplier that relate to the functional, operational and/or performance capabilities of the Services; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Supplier that describe the functional, operational and/or performance capabilities of the Services; (c) any Requests for Information and/or Requests for Proposals (or documents of similar effect) issued by University, and the responses thereeto from Supplier, and any document which purports to update or revise any of the foregoing; and (d) the results of any Supplier “Use Cases Presentation”, “Proof of Concept” or similar type presentations or tests provided by Supplier to University.

1.8 “Downtime” means any period of time of any duration that the Services are not made available by Supplier to University for any reason, including scheduled maintenance or Enhancements.

1.9 “End User” means the individuals (including, but not limited to employees, authorized agents, students and volunteers of University; Third Party consultants, auditors and other independent contractors performing services for University; any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any Services; customers of University provided services; and any external users collaborating with University) authorized by University to access and use the Services provided by Supplier under this Agreement.

1.10 “End User Data” includes End User account credentials and information, and all records sent, received, or created by or for End Users, including email content, headers, and attachments, and any Protected Information of any End User or Third Party contained therein or in any logs or other records of Supplier reflecting End User’s use of Supplier Services.

1.11 “Enhancements” means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Services that Supplier may develop or acquire and incorporate into its standard version of the Services or which the Supplier has elected to make generally available to its customers.
1.12 “Intellectual Property Rights” includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation-in-part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, and federal law; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, and federal law; and (d) proprietary indicia, trademarks, trade names, symbols, logos, and/or brand names under common law, state law, and federal law.

1.13 “Protected Information” includes but is not limited to personally-identifiable information, student records, protected health information, or individual financial information (collectively, “Protected Information”) that is subject to state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801 through 6809; the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); and the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164).

1.14 “Project Manager” means the individual who shall serve as each party’s point of contact with the other party’s personnel as provided in this Agreement. The initial Project Managers and their contact information are set forth in the Notices section below and may be changed by a party at any time upon written notice to the other party.

1.15 “RFP Response” means any proposal submitted by Supplier to University in response to University’s Request for Proposal (“RFP”) titled [ENTER RFP NAME, NUMBER, AND DATE HERE].

1.16 “Services” means Supplier’s computing solutions, provided over the Internet to University pursuant to this Agreement, that provide the functionality and/or produce the results described in the Documentation, including without limitation all Enhancements thereto and all interfaces.

1.17 “Third Party” means persons, corporations and entities other than Supplier, University or any of their employees, contractors or agents.

1.18 “University Data” includes credentials issued to University by Supplier and all records relating to University’s use of Supplier Services and administration of End User accounts, including any Protected Information of University personnel that does not otherwise constitute Protected Information of an End User.

2. ORDER OF PRECEDENCE
The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any schedules, exhibits, attachments, addenda and other attached and included documents:

(a) First, the terms contained in the body of this Agreement and the terms of the attached University of California Appendix DS
(b) Second, the terms of the schedules, exhibits, attachments and addenda to this Agreement, provided that no order of precedence shall be applied between said schedules, exhibits, attachments and addenda; and
(c) Third, all Documentation (as defined in DEFINITIONS section above) not included in the foregoing (a) or (b) above.

3. SCOPE OF AGREEMENT

3.1 The Services included under this Agreement are as follows: [LIST THE FUNCTIONALITY AND NAME(S) OF THE INCLUDED PRODUCTS AND/OR SERVICES HERE].

3.2 All Services, including any Support and Training requirements addressed herein, provided by Supplier that are provided online shall be Web Content Accessibility Guidelines (WCAG) 2.0 AA compliant.

3.3 Supplier will provide any name changes that occur with any Services provided to University under this Agreement within thirty (30) calendar days of such change. Supplier must also provide the foregoing information within thirty (30) calendar days of University’s request.

3.4 If Supplier eliminates any functionality of any of the Services provided under this Agreement and subsequently offers that functionality in other or new products (whether directly or indirectly through agreement with a Third Party), then the portion of those other or new products that contain the functions in question, or the entire product if the functions cannot be separated out, shall be provided to University at no additional charge and under the terms of this Agreement, including technical support. If Supplier incorporates the functionality of the Services provided under this Agreement into a newer product and continues to offer both products, University may, in its sole discretion, exercise the option to upgrade to the newer product at no additional cost.

3.5 University acquires the right to use the Services acquired under this Agreement at any location under the direct control of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.

3.6 Supplier agrees to extend the terms and conditions of this Agreement, including pricing, to all current and future UC locations at their request.
3.7 Supplier also agrees to extend the terms and conditions of this Agreement, including pricing, to the California State University System. An Agreement of Understanding exists between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and The Trustees of the California State University (CSU), establishing the California Higher Education Consortium (CHEC). Through a collaborative relationship, the Consortium seeks to combine procurement and contracting activities and efforts to obtain best value goods and services while reducing total acquisition costs. Accordingly, this Agreement is applicable to all campuses of the Trustees of the California State University (CSU) under the following conditions:

a) Supplier agrees to extend the same product pricing and Services to the CSU campuses under the terms of this Agreement, but under a separate CSU agreement.

b) All contractual administration issues regarding this Agreement (e.g. terms and conditions, extensions, renewals, etc.) shall remain the responsibility of the University of California. Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual CSU campuses shall be addressed, administered, and resolved by that CSU campus and Supplier. The University of California and the California State University are separate and distinct governmental entities. As such, each administrative unit and campus therein is financially separate and shall be responsible for its respective individual commitments, financial and otherwise, and neither is responsible for the performance of the other. No fiduciary responsibility exists between the University of California and California State University and their respective campuses.

4. RIGHTS AND LICENSE IN AND TO UNIVERSITY AND END USER DATA

4.1 The parties agree that as between them, all rights, including all Intellectual Property Rights, in and to University and End User Data shall remain the exclusive property of University, and Supplier has a limited, nonexclusive license to access and use these Data as provided in this Agreement solely for the purpose of performing its obligations hereunder.

4.2 All End User Data and University Data created and/or processed by the Services is and shall remain the property of University and shall in no way become attached to the Services, nor shall Supplier have any rights in or to the Data of University.

4.3 This Agreement does not give a party any rights, implied or otherwise, to the other’s Data, content, or intellectual property, except as expressly stated in the Agreement.

4.4 University retains the right to use the Services to access and retrieve University and End User Data stored on Supplier’s Services infrastructure at any time at its sole discretion.
5. **DATA PRIVACY**

5.1 Supplier will use University Data and End User Data only for the purpose of fulfilling its duties under this Agreement and for University’s and its End User’s sole benefit, and will not share such Data with or disclose it to any Third Party without the prior written consent of University or as otherwise required by law. By way of illustration and not of limitation, Supplier will not use such Data for Supplier’s own benefit and, in particular, will not engage in “data mining” of University or End User Data or communications, whether through automated or human means, except as specifically and expressly required by law or authorized in writing by University.

5.2 All University and End User Data will be stored on servers located solely within the Continental United States.

5.3 Supplier will provide access to University and End User Data only to those Supplier employees, contractors and subcontractors (“Supplier Staff”) who need to access the Data to fulfill Supplier’s obligations under this Agreement. Supplier will ensure that, prior to being granted access to the Data, Supplier Staff who perform work under this Agreement have all undergone and passed criminal background screenings; have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees’ duties and the sensitivity of the Data they will be handling.

5.4 University represents that it is subject to the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g and its implementing regulations (“FERPA”). To the extent Supplier has access to “Education Records,” it is deemed a “school official” as each of these terms is defined in FERPA. In addition, Supplier agrees to abide by the limitations and requirements imposed on school officials in FERPA.

5.5 University represents that it may be deemed a “financial institution” subject to the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 and its implementing regulations (“GLB”). Without representing that it is subject to GLM, Supplier acknowledges that it may have access under this Agreement to University’s financial information and other nonpublic personal information protected under GLB. To assist the University in meeting its GLB obligations, Supplier will implement, maintain, and use appropriate and sufficient administrative, technical, and physical security measures to protect the confidentiality and integrity of all electronically maintained or transmitted University data. Supplier will protect said data according to commercially acceptable standards and no less rigorously than it protects its own confidential information.

6. **DATA SECURITY AND INTEGRITY**

6.1 All facilities used to store and process University and End User Data will implement and maintain administrative, physical, technical, and procedural safeguards and best practices at a level sufficient to secure such Data from unauthorized access, destruction,
use, modification, or disclosure. Such measures will be no less protective than those used to secure Supplier’s own Data of a similar type, and in no event less than reasonable in view of the type and nature of the Data involved.

6.2 Supplier shall maintain the administrative, physical, technical, and procedural infrastructure associated with the provision of the Services to University in a manner that is, at all times during the term of this Agreement, at a level equal to or more stringent than those specified in Exhibit [__], which is incorporated herein by reference.

6.3 Without limiting the foregoing, Supplier warrants that all University Data and End User Data will be encrypted in transmission (including via web interface) and in storage at a level equivalent to or stronger than 128-bit level encryption.

6.4 Supplier shall at all times use industry-standard and up-to-date security tools, technologies and procedures including, but not limited to anti-virus and anti-malware protections and intrusion detection and reporting methods [List additional specifically required security mechanisms here as appropriate.] in providing Services under this Agreement.

6.5 Supplier will configure the Services to filter spam while permitting communications from Third Party Internet Protocol addresses identified by University as legitimate, as specified in Exhibit [__].

6.6 Prior to the Effective Date of this Agreement, Supplier will at its expense conduct or have conducted the following, and thereafter, Supplier will at its expense conduct or have conducted the following at least once per year, and immediately after any actual or reasonably suspected Data Compromise:

a) A SSAE 16/SOC 2 audit of Supplier’s security policies, procedures and controls;
b) Certification under [ENTER “NIST FIPS 200 AND SP 800-53", “ISO 27001/27002", OR OTHER ACCEPTABLE STANDARD CLOUD COMPUTING SERVICES CERTIFICATION HERE].
c) A vulnerability scan, performed by a University-approved Third Party scanner, of Supplier’s systems and facilities that are used in any way to deliver Services under this Agreement;
d) A formal penetration test, performed by a process and qualified personnel approved by University, of Supplier’s systems and facilities that are used in any way to deliver Services under this Agreement.

6.7 Supplier will provide University the reports or other documentation resulting from the above audits, certifications, scans and tests within seven (7) business days of Supplier’s receipt of such results.
6.8 Based on the results of the above audits, certifications, scans and tests, Supplier will, within thirty (30) calendar days of receipt of such results, promptly modify its security measures in order to meet its obligations under this Agreement, and provide University with written evidence of remediation.

6.9 University may require, at its expense, that Supplier perform additional audits and tests, the results of which will be provided to University within seven (7) business days of Supplier’s receipt of such results.

6.10 Supplier shall protect University and End User Data against deterioration or degradation of Data quality and authenticity, including, but not limited to annual Third Party Data integrity audits. Supplier will provide University the results of the above audits, along with Supplier’s plan for addressing or resolving any shortcomings identified by such audits, within seven (7) business days of Supplier’s receipt of such results.

7. RESPONSE TO LEGAL ORDERS, DEMANDS OR REQUESTS FOR DATA

7.1 Except as otherwise expressly prohibited by law, Supplier will:

a) If required by a court of competent jurisdiction or an administrative body to disclose University and/or End User Data, Supplier will notify University in writing immediately upon receiving notice of such requirement and prior to any such disclosure;
b) Consult with University regarding its response;
c) Cooperate with University’s reasonable requests in connection with efforts by University to intervene and quash or modify the legal order, demand or request; and
d) Upon University’s request, provide University with a copy of its response.

7.2 If University receives a subpoena, warrant, or other legal order, demand or request seeking University or End User Data maintained by Supplier, University will promptly provide a copy to Supplier. Supplier will supply University with copies of Data required for University to respond within forty-eight (48) hours after receipt of copy from University, and will cooperate with University’s reasonable requests in connection with its response.

8. DATA COMPROMISE RESPONSE

8.1 Supplier shall report, either orally or in writing, to University any Data Compromise involving University or End User Data, or circumstances that could have resulted in unauthorized access to or disclosure or use of University or End User Data, not authorized by this Agreement or in writing by University, including any reasonable belief that an unauthorized individual has accessed University or End User Data. Supplier shall make the report to University immediately upon discovery of the unauthorized disclosure, but in no event more than forty-eight (48) hours after Supplier reasonably believes there has been such unauthorized use or disclosure. Oral reports by Supplier regarding Data
Compromises will be reduced to writing and supplied to University as soon as reasonably practicable, but in no event more than forty-eight (48) hours after oral report.

8.2 Immediately upon becoming aware of any such Data Compromise, Supplier shall fully investigate the circumstances, extent and causes of the Data Compromise, and report the results to University and continue to keep University informed on a daily basis of the progress of its investigation until the issue has been effectively resolved.

8.3 Supplier’s report discussed herein shall identify: (i) the nature of the unauthorized use or disclosure, (ii) the University or End User Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure (if known), (iv) what Supplier has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Supplier has taken or shall take to prevent future similar unauthorized use or disclosure.

8.4 Within five (5) calendar days of the date Supplier becomes aware of any such Data Compromise, Supplier shall have completed implementation of corrective actions to remedy the Data Compromise, restore University access to the Services as directed by University, and prevent further similar unauthorized use or disclosure.

8.5 Supplier, at its expense, shall cooperate fully with University’s investigation of and response to any such Data Compromise incident.

8.6 Except as otherwise required by law, Supplier will not provide notice of the incident directly to the persons whose Data were involved, regulatory agencies, or other entities, without prior written permission from University.

8.7 Notwithstanding any other provision of this agreement, and in addition to any other remedies available to University under law or equity, Supplier will promptly reimburse University in full for all costs incurred by University in any investigation, remediation or litigation resulting from any such Data Compromise, including but not limited to providing notification to Third Parties whose Data were compromised and to regulatory bodies, law-enforcement agencies or other entities as required by law or contract; establishing and monitoring call center(s), and credit monitoring and/or identity restoration services to assist each person impacted by a Data Compromise in such a fashion that, in University’s sole discretion, could lead to identity theft; and the payment of legal fees and expenses, audit costs, fines and penalties, and other fees imposed by regulatory agencies, courts of law, or contracting partners as a result of the Data Compromise.

9. DATA RETENTION AND DISPOSAL

9.1 Supplier will retain Data in an End User’s account, including attachments, until the End User deletes them or for the time period mutually agreed to by the parties in this Agreement.
9.2 Using appropriate and reliable storage media, Supplier will regularly backup University and End User Data and retain such backup copies for a minimum of twelve (12) months.

9.3 At the University’s election, Supplier will either securely destroy or transmit to University repository any backup copies of University and/or End User Data. Supplier will supply University a certificate indicating the records disposed of, the date disposed of, and the method of disposition used.

9.4 Supplier will retain logs associated with End User activity for a minimum of twelve (12) months.

9.5 Supplier will immediately place a “hold” on Data destruction or disposal under its usual records retention policies of records that include University and End User Data, in response to an oral or written request from University indicating that those records may be relevant to litigation that University reasonably anticipates. Oral requests by University for a hold on record destruction will be reduced to writing and supplied to Supplier for its records as soon as reasonably practicable under the circumstances. University will promptly coordinate with Supplier regarding the preservation and disposition of these records. Supplier shall continue to preserve the records until further notice by University.

10. DATA TRANSFER UPON TERMINATION OR EXPIRATION

10.1 Upon termination or expiration of this Agreement, Supplier will ensure that all University and End User Data are securely transferred to University, or a Third Party designated by University, within thirty (30) calendar days, all as further specified in the technical specifications attached as Exhibit ___. Supplier will ensure that such migration uses facilities and methods that are compatible with the relevant systems of University, and that University will have access to University and End User Data during the transition. In the event that it is not possible to transfer the aforementioned data to University in a format that does not require proprietary software to access the data, Supplier shall provide University with an unlimited use, perpetual license to any proprietary software necessary in order to gain access to the data.

10.2 Supplier will provide University with no less than ninety (90) calendar days notice of impending cessation of its business or that of any Supplier subcontractor and any contingency plans in the event of notice of such cessation. This includes immediate transfer of any previously escrowed assets and Data and providing University access to Supplier’s facilities to remove and destroy University-owned assets and Data.

10.3 Along with the notice described above, Supplier will provide a fully documented service description and perform and document a gap analysis by examining any differences between its Services and those to be provided by its successor.
10.4 Supplier will provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to University.

10.5 Supplier shall implement its contingency and/or exit plans and take all necessary actions to provide for an effective and efficient transition of service with minimal disruption to University. Supplier will work closely with its successor to ensure a successful transition to the new service and/or equipment, with minimal Downtime and effect on University, all such work to be coordinated and performed no less than ninety (90) calendar days in advance of the formal, final transition date.

11. SERVICE LEVELS

11.1 Supplier represents and warrants that the Services will be performed in a professional manner consistent with industry standards reasonably applicable to such Services.

11.2 Supplier represents and warrants that the Services will be operational at least 99.99% of the time in any given month during the term of this Agreement, meaning that the outage or Downtime percentage will be not more than .01%.

11.3 If the Services availability falls below 99.99% in any month, Supplier shall provide University with a credit of that month’s bill for Services according to the table below.

<table>
<thead>
<tr>
<th>AVAILABILITY PERCENTAGE</th>
<th>PERCENTAGE OF CREDIT</th>
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<tbody>
<tr>
<td>99.60% to 99.69%</td>
<td>10%</td>
</tr>
<tr>
<td>99.50% to 99.59%</td>
<td>20%</td>
</tr>
<tr>
<td>99.00% to 99.49%</td>
<td>30%</td>
</tr>
<tr>
<td>97.00% to 99.00%</td>
<td>50%</td>
</tr>
<tr>
<td>Below 97.00%</td>
<td>75%</td>
</tr>
</tbody>
</table>

11.4 Supplier represents and warrants that ninety-five percent (95%) of all transactions shall process within no more than one (1) second, and no single transactions shall take longer than five (5) seconds to process.

11.5 If Supplier’s system response times fall below the warranted level for two (2) or more consecutive weeks, Supplier shall provide University with a credit in the amount of twenty percent (20%) of the Services fees for that month. If Supplier’s system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, Supplier shall be considered to be in default, and University may terminate the Agreement without penalty.

11.6 Supplier shall provide University with any credits resulting from all unachieved service levels in the form of a check provided to University no later than the tenth (10th) business day of the month following the month in which the service levels was not achieved.
11.7 Supplier shall provide University with monthly reports documenting its compliance with the service levels detailed herein. Reports shall include, but not be limited to, providing the following information:

a) Monthly Services availability by percent time, dates and minutes that Services were not available, and identification of months in which agreed upon service levels were not achieved;

b) Average transaction processing time per week, the fastest and slowest individual transaction processing time per week, the percent of transactions processed that meet the service levels stated herein, and identification of weeks in which agreed upon service levels are not met.

11.8 University retains the right to use a Third Party to validate Supplier’s performance in meeting agreed upon service levels.

12. INTERRUPTIONS IN SERVICE; SUSPENSION AND TERMINATION OF SERVICE; CHANGES TO SERVICE

12.1 Notwithstanding the Force Majeure provisions contained herein, Supplier shall be responsible for providing disaster recovery Services if Supplier experiences or suffers a disaster. Supplier shall take all necessary steps to ensure that University shall not be denied access to the Services for more than five (5) hours in the event there is a disaster impacting any Supplier infrastructure necessary to provide the Services. Supplier shall maintain the capability to resume provisions of the Services from an alternative location and via an alternative telecommunications route in the event of a disaster that renders the Supplier’s primary infrastructure unusable or unavailable. If Supplier fails to restore the Services within five (5) hours of the initial disruption of service, University may declare Supplier to be in default of this Agreement and University may seek alternate services, which would have otherwise been provided under this Agreement, from Third Parties. Supplier shall reimburse University for all costs reasonably incurred by University in obtaining such alternative services, with payment to be made within thirty (30) calendar days of University’s written request for such payment.

12.2 In the event of a service outage, Supplier will refund or credit University, at University’s election, the pro-rated amount of fees corresponding to the time Services were unavailable.

12.3 Supplier warrants that the minimum technical requirements for access to and operation of the Services are [LIST HERE APPLICABLE REQUIREMENTS, E.G. MICROSOFT INTERNET EXPLORER VERSION ## (OR HIGHER), FIREFOX VERSION ## (OR HIGHER), ETC. ALSO, CONSIDER ANY APPLICABLE REQUIREMENTS FOR ACCESS/USE BY MOBILE DEVICES]. If future Enhancements to the Services require use of newer versions of these web browsers, Supplier will provide a minimum of one
hundred and eighty (180) days written notice to University prior to implementing such Enhancements. Additional technical requirements for complete operation of all functionality of the Services include [INSERT HERE ANY OTHER TECHNICAL REQUIREMENTS NECESSARY TO ACCESS AND/OR OPERATE THE SERVICES].

12.4 From time to time it may be necessary or desirable for either the University or Supplier to propose changes in the Services provided. Such changes shall be made pursuant to the Change Control Procedure attached as Exhibit ___. Automatic Enhancements to any software used by Supplier to provide the Services that simply improve the speed, efficiency, reliability, or availability of existing Services and do not alter or add functionality, are not considered “changes to the Services” and such Enhancements will be implemented by Supplier on a schedule no less favorable than provided by Supplier to any other customer receiving comparable levels of Services.

12.5 Supplier will provide University with ninety (90) calendar days prior notice of any times that the Services will be unavailable due to non-emergency maintenance or Enhancements. Supplier will schedule any such times that the Services will be unavailable during [ENTER HERE THE DATES AND/OR TIMES THAT BEST MEET YOUR NEEDS (I.E. DO NOT CONFLICT WITH YOUR PERIODS OF PEAK WORKLOAD)]. In the event of unscheduled and unforeseen times that the Services will for any reason, except as otherwise prohibited by law, Supplier will immediately notify University and cooperate with University’s reasonable requests for information regarding the Services being unavailable (including causes, effect on Services, and estimated duration).

12.6 University may suspend or terminate (or direct Supplier to suspend or terminate) an End User’s access to Services in accordance with University’s policies. University will assume sole responsibility for any claims made by End User regarding University’s suspension/termination or directive to suspend/terminate such Services.

12.7 Supplier may suspend access to Services by an End User immediately in response to an act or omission that reasonably appears to jeopardize the security or integrity of Supplier’s Services or the network(s) or facilities used to provide the Services. Suspension will be to the minimum extent, and of the minimum duration, required to prevent or end the security issue. The suspension will be lifted immediately once the breach is cured. Supplier may suspend access to Services by an End User in response to a material breach by End User of any terms of use s/he has agreed to in connection with receiving the Services. Supplier will immediately notify University of any suspension of End User access to Services.

12.8 Supplier may suspend access to Services by University in response to an act or omission that poses a significant threat to the security or integrity of Supplier’s Services or the network(s) or facilities used to provide the Services. Supplier will provide University with at least fifteen (15) business days advance written notice of intent to suspend and justification for suspension. University will have fifteen (15) business days to review and respond to such notice, and to correct any such action or omission prior to suspension. If
University’s response resolves the issue to the parties’ mutual satisfaction, suspension will not occur. If University is unable to resolve the issue within the stated timeframe, then suspension will be to the minimum extent, and of the minimum duration, required to prevent or end the security issue. Any such suspension will be lifted immediately once the breach is cured.

13. INSTITUTIONAL BRANDING

Supplier Services will provide reasonable and appropriate opportunities for University branding of Supplier Services, as further specified in a mutually agreed upon Institutional Branding Plan to be attached as Exhibit [ ]. Each party shall have the right to use the other party’s Brand Features only in connection with performing the functions provided in this Agreement and as specified in the attached Plan. Any use of a party’s Brand Features will inure to the benefit of the party holding Intellectual Property Rights in and to those features. Supplier may not advertise that University is a client, list University as a reference or otherwise use University’s name, logos, trademarks, or service marks without prior written permission obtained from University personnel authorized to permit University brand use.

14. COMPLIANCE WITH APPLICABLE LAWS AND UNIVERSITY POLICIES

Supplier will comply with all applicable laws in performing Services under this Agreement. Any Supplier personnel visiting University’s facilities will comply with all applicable University policies regarding access to, use of, and conduct within such facilities. University will provide copies of such policies to Supplier upon request.

15. TECHNICAL SUPPORT

15.1 During the term of this Agreement Supplier will provide University and End Users with ongoing technical support for the Services at no less than the levels and in the manner(s) specified herein.

15.2 Supplier may not withdraw technical support for any Service without twelve (12) months advance written notice to University, and then only if Supplier is withdrawing technical support from all of its customers.

15.3 University acquires the right to use technical support acquired under this Agreement at any location under the direct control of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.

15.4 University shall receive at its option the general help desk technical support offered by Supplier to its other customers. Irrespective of Supplier’s general technical support offerings, Supplier shall provide University at University’s option with the following technical support:
a) Supplier shall provide technical support to University for the purpose of answering questions relating to the Services, including (a) clarification of functions and features of the Services; (b) clarification of the Documentation; (c) guidance in the operation of the Services; and (d) error verification, analysis, and correction, including the failure to produce results in accordance with the Documentation.

b) Such assistance shall be provided by Supplier twenty-four (24) hours a day, seven (7) days a week via a toll-free telephone number and live, online chat staffed by help desk technicians sufficiently trained and experienced to identify and resolve most support issues and who shall respond to all University requests for support within fifteen (15) minutes after receiving a request for assistance.

c) Supplier shall provide a current list of persons and telephone numbers for University to contact to enable University to escalate its support requests for issues that cannot be resolved by a help desk technician or for circumstances where a help desk technician does not respond within the time specified herein.

d) In addition to Supplier’s obligations under Section 3.2 of this Agreement, Supplier provided telephone technical support shall be compliant with Section 508 of the Rehabilitation Act.

15.5 The following provisions shall be applicable to the correction of Services errors:

a) If University detects what it considers to be an error in the Services which causes it not to conform to, or produce results in accordance with, the Documentation, then University shall by telephone or e-mail notify Supplier of the error.

b) Supplier shall deliver to University and keep current a list of persons and telephone numbers (the “Calling List”) for University to contact in order to obtain corrections of Services errors. The Calling List shall include: (1) the first person to contact if a question arises or problem occurs; and (2) the persons in successively more responsible or qualified positions to provide the answer or assistance desired. If Supplier does not respond promptly to any request by University for telephone consultative service, University may attempt to contact the next more responsible or qualified person on the Calling List until contact is made and a designated person responds to the call.

c) Supplier shall respond within two (2) hours to University’s initial request for assistance in correcting or creating a workaround for a Services error. Supplier’s response shall include assigning fully-qualified technicians to work with University to diagnose and correct or create a workaround for the Services error and notifying University’s representative making the initial request for assistance of Supplier’s efforts, plans for resolution of the error, and estimated time required to resolve the error.
d) For Class 1 Errors, within twenty-four (24) hours after University first reports the error, Supplier shall provide a correction or workaround acceptable to University. Supplier’s correction process shall include assigning fully-qualified technicians to work with University without interruption or additional charge.

e) If Supplier fails to provide a reasonable correction or workaround for a Class 1 Error within twenty-four (24) hours, Supplier shall pay University, as a price adjustment reflecting the reduction of value University will incur as a result of the Class 1 Error and not as a penalty or compensation for damage, the sum of 2/365 of the technical support fees, expressed as an annual charge, for each additional day or part thereof that Supplier fails to provide a reasonable correction or workaround for the Class 1 Error. Supplier shall provide such payment in the form of a check provided to University no later than the tenth (10th) business day following the month in which failure to correct occurred.

f) The Project Managers, or such persons as otherwise designated by University and Supplier, shall serve as said parties’ contacts for all communications relating to technical support. Each party may change its own contact person by written notice to the other party.

15.6 The following provisions shall set forth Supplier’s obligations to provide Enhancements:

a) Supplier shall generally enhance and improve the Services for as long as University elects to receive and pays for the Services.

b) Supplier shall provide to University during the Agreement term, (a) any and all Enhancements which it develops with respect to the Services; (b) any and all Enhancements required by federal or state governmental, or professional regulatory mandates related to University’s use of the Services; and (c) the Documentation associated with any Enhancements.

c) Supplier shall provide Enhancements to University upon their general release and no later than the time when the first five percent (5%) of Supplier’s customers receive those Enhancements.

d) Except as otherwise provided in a signed addendum to this Agreement, nothing herein shall obligate Supplier to enhance the Services in any particular respect or on any particular date. The decision as to whether and/or when, to enhance the Services will be within Supplier’s discretion.

15.7 Supplier will provide University with ninety (90) calendar days advance written notice of proposed product changes as well as product road maps relating to the Services provided to University under this Agreement.

16. TRAINING
16.1 Supplier shall provide University with training for the purposes of understanding and using the Services ("Training Services"). Training Services will be provided by Supplier as detailed below at no additional cost to University. Training Services will be provided by Supplier at University at mutually agreeable dates and times, but no later than one hundred eighty (180) calendar days following the Effective Date of this Agreement.

16.2 [INCLUDE DESCRIPTION, FREQUENCY AND TIMING OF ANY NEGOTIATED TRAINING SERVICES HERE (OR AS A REFERENCED ATTACHED SCHEDULE)].

17. TRANSITION ASSISTANCE

17.1 Supplier will develop, provide and implement the following transition assistance ("Transition Assistance") to support University’s successful and uninterrupted transition from its current solution, or other solution in this area, to Supplier’s Services. Transition Assistance will be provided by Supplier as detailed below at no additional cost to University. Transition assistance will be provided by Supplier at University at mutually agreeable dates and times, but no later than ten (10) calendar days following the Effective Date of this Agreement.

[INCLUDE DESCRIPTION, FREQUENCY AND TIMING OF ANY NEGOTIATED TRANSITION ASSISTANCE HERE. EXAMPLE TEXT IS BELOW].

17.2 Within no more than ten (10) calendar days after the Effective Date of this Agreement, Supplier shall, at its own expense, provide qualified individuals to (a) uninstall existing solution, (b) implement the Services, and (c) assist in testing of the Services to ensure that they are functioning in accordance with the terms of this Agreement.

17.3 Supplier’s Project Manager shall coordinate with University’s Project Manager, and they shall develop a mutually agreeable installation plan and schedule for the assistance provided above.

17.4 The installation plan shall provide for:

a) The timely and successful integration of Supplier software, applications and Services with University’s existing identity management and access management systems [SPECIFY EXISTING IMAM SYSTEMS HERE AS APPROPRIATE.];

b) The timely and successful integration with specified University applications [SPECIFY APPLICATIONS HERE.];

c) The availability of and support for the Services via specified University and End User devices including mobile devices [SPECIFY DEVICES HERE]; and
d) University’s ability to, directly or through instructions to Supplier, create, modify, suspend, eliminate, assign aliases for, and internally delegate the administration of, individual and group accounts created as part of Supplier’s provision of Services.

17.5 University agrees (a) to have the site(s) at which the Services will be used prepared in accordance with applicable Supplier requirements prior to the Effective Date of the installation plan and schedule; and (b) maintain the site(s) at its own expense subsequent to completion of the installation plan and schedule. University shall provide any and all necessary utility services for use of the Services.

17.6 In connection with Supplier’s Transition Assistance, University will provide information, Data, computer access and time, work space, forms, data entry and telephone service and personnel reasonably necessary to assist Supplier consistent with University’s policies and procedures.

17.7 In the event that Supplier fails to meet the target date for completion of transition, Supplier shall credit University ten percent (10%) of the monthly Services fees for every business day the transition is late. If Supplier misses the target date by more than thirty (30) calendar days, Supplier shall be in breach of the Agreement.

18. FEES, INVOICING, PAYMENT AND TAXES

18.1 University agrees to pay all net undisputed amounts due to Supplier in accordance with the Services fee schedule set forth below. Such fees will be payable after access to the Services is provided to University and within thirty (30) calendar days of University’s receipt of Supplier’s invoice or the invoice due date, whichever is later. University shall not be subject to late payment fees.

18.2 [SPECIFY SERVICES FEE DETAILS HERE (OR AS A REFERENCED ATTACHED PRICE SCHEDULE) INCLUDING A DESCRIPTION OF THE SERVICE BEING ACQUIRED, LIST PRICE AND UNIVERSITY COST PER UNIT OF EACH SERVICE BEING ACQUIRED, QUANTITY OF UNITS INITIALLY BEING ACQUIRED, THE TERM FOR EACH SERVICE BEING ACQUIRED, AND ANY OTHER PERTINENT CONSIDERATIONS OR LIMITATIONS APPLICABLE TO THE SERVICES BEING ACQUIRED.]

18.3 If an invoiced amount is disputed in good faith by University then University shall work with the Supplier to resolve the dispute. University may suspend the payment of all disputed amounts until the dispute is resolved. All of Supplier’s obligations shall continue unabated until dispute resolution.

18.4 University will have the option to acquire additional Services throughout the duration of the Agreement at the per unit cost stated [ENTER EITHER “BELOW” OR “ON THE ATTACHED PRICE SCHEDULE”]
18.5 University will have the option to acquire additional Services for a monthly pro-rated portion of per unit cost in order that all Services acquired maintain the same term.

18.6 At University’s option, University purchases of additional Services will be on a quarterly basis where an order will be issued to Supplier at the end of each quarter for those additional Services that University began using during that quarter (“True-up”).

18.7 Services acquired during the initial purchase shall be provided by Supplier to University for an initial one (1) year term (the “Initial Services Term”) commencing on the “Services Commencement Date” (as hereafter defined). The Initial Services Term shall be renewable for successive one (1) year terms (“Extension Terms”, and collectively with the Initial Services Term, the “Services Term”) upon written notice from University to Supplier. For the purposes of this Agreement, the term “Services Commencement Date” shall refer to the first day of the month following the month in which the Services were initially provided to University.

18.8 Any additional Services acquired by University will be co-terminus with the term of the initially acquired Services.

18.9 After the first anniversary of the Initial Services Term, the Services shall be renewable for successive one (1) year terms (“Extension Terms”) upon written notice from University to Supplier.

18.10 University shall, in its sole discretion, have the option to renew the Services for a period of at least ten (10) annual renewal periods.

18.11 If University opts to renew, University shall pay Supplier annual renewal fees based upon Supplier’s rates for Extension Terms; provided that Supplier may not increase the annual fee more than the lesser of CPI-All Index or three percent (3%) from one year term to another; and provided further that the fees shall, at all times, be equal to or less than the lowest rate charged for such renewal to any of Supplier’s other customers.

18.12 Any taxes required for the purchase of the Services by University under this Agreement will be based on the current sales and use tax regulations of the State of California as they apply to the purchase of Services. Supplier must pay all other taxes.

18.13 Supplier shall provide University with an invoice for the Services acquired no later than thirty (30) calendar days prior to the invoice payment due date. Invoices shall provide and itemize, as applicable:
   a) Supplier name, address, phone number, and Federal Tax Identification Number;
   b) University Purchase Order number;
   c) Description of Services, including quantity ordered;
   d) Date(s) of fulfillment and/or date(s) of Training and/or date(s) of Transition Assistance;
19. ORDERING PROCEDURES

Supplier (including Supplier web site) must direct all inquiries from all University units regarding obtaining the products available under this Agreement to the contact listed in the Notices section herein, University's coordinating office for this Agreement.

20. REPORTING

20.1 Supplier shall provide University with Supplier’s current retail, government, non-profit and academic price lists for the Services upon each annual anniversary of this Agreement, and within five (5) business days of any mid-term changes to any of the above referenced price lists.

20.2 Supplier will provide University with monthly reports summarizing purchases made under this agreement at no additional cost to University.

20.3 Supplier agrees to provide other reports as reasonably requested by University during the term of the Agreement and any extension(s) to such term at no additional cost to University.

21. TERM AND TERMINATION

21.1 University may terminate this agreement upon thirty (30) calendar days written notice.

21.2 Supplier shall provide written notification regarding upcoming annual Agreement term expiration dates no less than sixty (60) calendar days prior to expiration dates.

21.3 University may terminate this Agreement immediately upon any Supplier substantive breach of the terms of this Agreement, any Business Associate Agreement or incorporated Appendix DS in accordance with the terms of this Agreement.

21.4 In the event of an uncorrected breach of this Agreement by Supplier, University shall be entitled to: (a) subject to the terms of the Limitation of Liability Section of this Agreement, seek to recover damages from Supplier; and/or (b) recover from Supplier all applicable attorneys’ fees and any litigation costs; and/or (c) discontinue any Services and receive a refund of any pre-paid but unearned Services.
21.5 Supplier may terminate this Agreement if University intentionally and materially breaches this Agreement and then fails to correct such breach within thirty (30) calendar days following receipt of written notice from Supplier of the breach. In the event of an uncorrected breach by University, Supplier shall be entitled to recover actual amounts owed by University to Supplier that accrued on or before the date of termination. Supplier expressly waives and disclaims any right or remedy it may have to unilaterally disable any Service or any portion of it.

21.6 Notwithstanding anything to the contrary in this Agreement, failure of University to pay invoices or other amounts due Supplier on a timely basis will not be deemed a breach of this Agreement provided (a) such failure results from a bona fide dispute which has been communicated to Supplier prior to the due date; (b) any undisputed amounts are paid in a timely fashion; (c) University Project Manager is available to resolve the dispute; and (d) any payment ultimately required to be made by University by settlement or order of a court or arbitrator is paid within thirty (30) business days after such resolution (“Bona Fide Dispute Provisions”). So long as the Bona Fide Dispute Provisions are being, or have been, complied with by University, University shall be entitled to exercise its rights granted under this Agreement, Supplier shall continue to perform its obligations under this Agreement (including any technical support), and University shall not be responsible for Supplier’s attorneys’ fees or court costs regardless of the outcome of the dispute.

21.7 University’s rights to the Services as provided in this Agreement will survive a bankruptcy claim by the Supplier consistent with applicable laws.

21.8 The following Sections shall survive the expiration or termination of this Agreement:

21.9 Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

22. **IDENTITY AND ACCESS MANAGEMENT**

The University of California utilizes processes and protocols of UCTrust and the InCommon Federation to identify and authenticate members of its community to web-based applications and contracted service providers. Supplier will take all necessary steps to ensure that the Services provided under this Agreement integrate with and utilize these processes and protocols to obtain end-user identity information, including joining InCommon in order to achieve this. Further information about UCTrust is available at [http://www.ucop.edu/irc/itlc/uctrust](http://www.ucop.edu/irc/itlc/uctrust), and information about InCommon is available at [http://www.incommonfederation.org](http://www.incommonfederation.org).

23. **WARRANTIES, REPRESENTATIONS AND COVENANTS**
23.1 University shall have the right to discontinue use of the Services for any reason, and shall receive a full refund of all payments, for a period of nineteen (90) calendar days after the Services Commencement Date (the “Warranty Period”).

23.2 Services Warranty. Supplier represents and warrants that the Services provided to University under this Agreement shall conform to, be performed, function, and produce results substantially in accordance with the Documentation. Supplier shall offer University warranty coverage equal to or greater than that offered by Supplier to any of its customers.

Supplier’s obligations for breach of the Services Warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Services which fails to conform to such warranty, and, if Supplier is unable to correct any breach in the Services Warranty by the date which is sixty (60) calendar days after University provides notice of such breach, University may, in its sole discretion, either extend the time for Supplier to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to Supplier under this Agreement.

23.3 Disabling Code Warranty. Supplier represents, warrants and agrees that the Services do not contain and University will not receive from Supplier any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify any University system or Data (a "Disabling Code").

In the event a Disabling Code is identified, Supplier shall take all steps necessary, at no additional cost to University, to: (a) restore and/or reconstruct any and all Data lost by University as a result of Disabling Code; (b) furnish to University a corrected version of the Services without the presence of Disabling Codes; and, (c) as needed, re-implement the Services at no additional cost to University. This warranty shall remain in full force and effect as long as this Agreement remains in effect.

23.4 Intellectual Property Warranty. Supplier represents, warrants and agrees that: Supplier has all Intellectual Property Rights necessary to provide the Services to University in accordance with the terms of this Agreement; Supplier is the sole owner or is a valid licensee of all software, text, pictures, audio, video, logos and copy that provides the foundation for provision of the Services, and has secured all necessary licenses, consents, and authorizations with respect to the use of these underlying elements; the Services do not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and there is currently no actual or threatened suit against Supplier by any Third Party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

23.5 Warranty of Authority. Each party represents and warrants that it has the right to enter into this Agreement. Supplier represents and warrants that it has the unrestricted
right to provide the Services, and that it has the financial viability to fulfill its obligations under this Agreement. Supplier represents, warrants and agrees that the Services shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. Supplier represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Services. This warranty shall survive the expiration or termination of this Agreement.

23.6 Third Party Warranties and Indemnities. Supplier will assign to University all Third Party warranties and indemnities that Supplier receives in connection with any products provided to University. To the extent that Supplier is not permitted to assign any warranties or indemnities through to University, Supplier agrees to specifically identify and enforce those warranties and indemnities on behalf of University to the extent Supplier is permitted to do so under the terms of the applicable Third Party agreements.

23.7 Date/Time Change Warranty. Supplier represents and warrants to University that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. Supplier must repair any date/time change defects at Supplier’s own expense.

23.8 Most Favored Customer Warranty. Supplier represents and warrants and agrees that the Services and other fees stated herein are and shall be the lowest fees Supplier charges any of its other customers. In any case where University fees are found to be higher, then Supplier will provide University with a retroactive refund for any overpayment.

23.9 Compliance With Laws Warranty. Supplier represents and warrants to University that it will comply with all applicable laws, including its tax responsibilities, pertaining to the Agreement and its provision of the Services to University.

23.10 THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SERVICES PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

24. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION

24.1 Supplier shall indemnify, defend and hold University harmless from any and all actions, proceedings, or claims of any type brought against University alleging that the Services and/or Documentation or University’s use of the Services and/or Documentation constitutes a misappropriation or infringement upon any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party. Supplier agrees to defend against, and hold University harmless from, any claims and to pay all litigation costs, all reasonable attorneys’ fees, settlement payments and all judgments, damages, costs or expenses awarded or resulting from any claim. University shall, after receiving notice of a claim, advise Supplier of it. University’s failure to give
Supplier timely notification of said claim shall not affect Supplier's indemnification obligation unless such failure materially prejudices Supplier's ability to defend the claim. University reserves the right to employ separate counsel and participate in the defense of any claim at its own expense.

24.2 If the Services and/or Documentation, or any part thereof, is the subject of any claim for infringement of any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, or if it is adjudicated by a court of competent jurisdiction that the Services and/or Documentation, or any part thereof, infringes any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, and University’s use of the Services and/or Documentation, or any part of it, is enjoined or interfered with in any manner, Supplier shall, at its sole expense and within thirty (30) calendar days of such injunction or interference, either: (a) procure for University the right to continue using the Services and/or Documentation free of any liability for infringement or violation; (b) modify the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to University; or (c) replace the Services and/or Documentation, or parts thereof, with non-infringing Services and/or Documentation of equivalent or better functionality that is reasonably satisfactory to University.

24.3 Supplier shall have no obligation to indemnify University for a claim if: (a) University uses the Services in a manner contrary to the provisions of this Agreement and such misuse is the cause of the infringement or misappropriation; or (b) University's use of the Services in combination with any product or system not authorized, approved or recommended by Supplier and such combination is the cause of the infringement or misappropriation.

24.4 No limitation of liability set forth elsewhere in this Agreement is applicable to the Intellectual Property Infringement Indemnification set forth herein.

25. GENERAL INDEMNIFICATION

25.1 Supplier shall defend, indemnify, and hold harmless University, its officers, employees, and agents, assignees and successors-in-interest from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Supplier's performance hereunder, provided such losses, expenses, damages and liabilities are not caused by the sole negligence of the University, its officers, employees, and agents.

25.2 Supplier shall keep University reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit University, at its expense, to participate in the defense or settlement of the claim. University agrees to reasonably cooperate with Supplier in defending the action, and Supplier will not agree to settle or otherwise resolve the action without the consent of University, which consent shall not be unreasonably withheld.
25.3 Supplier shall defend, indemnify and hold the University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys’ fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages caused by or resulting from the negligent or intentional acts or omissions of the Supplier, its officers, employees, or agents.

25.4 University shall defend, indemnify and hold the Supplier, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys’ fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages caused by or resulting from the negligent or intentional acts or omissions of the University, its officers, employees, or agents.

25.5 The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other party, at its expense, to participate in the defense or settlement of the claim, provided, however that the indemnifying party has the sole control of the defense. The indemnifying party may not admit liability of the indemnified party in any settlement.

26. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR REQUIRED BY LAW, NEITHER PARTY SHALL BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY IS NOT APPLICABLE TO SUPPLIER’S WARRANTY AND INDEMNIFICATION OBLIGATIONS SET FORTH ELSEWHERE IN THIS AGREEMENT OR ANY PERSONAL INJURY CLAIM. FURTHER, THE FOREGOING LIMITATION IS NOT APPLICABLE TO DAMAGES ARISING OUT OF ANY LOSS, CORRUPTION, OR BREACH OF DATA CAUSED BY OR RESULTING FROM SUPPLIER’S ERRORS OR OMISSIONS.

27. INSURANCE

27.1 On or before the Effective Date, Supplier shall provide to University proof, such as an insurance certificate, evidencing full compliance with the insurance requirements set forth herein.

Supplier, at its sole cost and expense, shall insure its activities in connection with the work under this order and obtain, keep in force, and maintain insurance as follows:
a) Comprehensive or Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

Each Occurrence $3,000,000.00

Products/Completed Operations Aggregate $5,000,000.00

Personal and Advertising Injury $3,000,000.00

General Aggregate (Not applicable to the Comprehensive Form) $5,000,000.00

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

b) Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than $1,000,000.00 per occurrence.

c) Technology, professional liability, data protection, and/or cyber liability insurance policy(ies) covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in connection with the performance of this Agreement as well as all Supplier costs, including damages it is obligated to pay University or any Third Party, which are associated with any Security Breach (as hereafter defined) or loss of University and/or End User Data, regardless of cause (including, without limitation, Supplier negligence or gross negligence and unlawful Third Party acts). Costs to be covered by this insurance policy shall include without limitation: (i) costs to notify individuals whose Data was lost or compromised; (ii) costs to provide credit monitoring and credit restoration services to individuals whose Data was lost or compromised; (iii) costs associated with Third Party claims arising from the Security Breach or loss of Data, including litigation costs and settlement costs; and (iv) any investigation, enforcement or similar miscellaneous costs. Such insurance shall provide coverage for up to [ENTER AMOUNT HERE]. For the purposes of this Section, "Security Breach" means: (i) the failure by Supplier to properly handle, manage, store, destroy or otherwise control, or the unauthorized disclosure by Supplier of: (a) University and/or End User Data in any format or (b) Third Party corporate information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (ii) an unintentional violation of Supplier's privacy policy or misappropriation that results in the violation of any applicable data privacy laws or regulations; or (iii) any other act, error, or omission by Supplier in its capacity as such which is reasonably likely to result in the unauthorized disclosure of University and/or End User Data.
If this insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

d) Workers' Compensation as required by California State law.

27.2 It is agreed that the coverage and limits referred to under 27.1 a, b, and c above shall not in any way limit the liability of Supplier. Supplier shall furnish the University with certificates of insurance and additional insured endorsements evidencing compliance with all requirements prior to commencing work under this Agreement. Such certificates shall:

a) Provide for thirty (30) calendar days advance written notice to the University of any modification, change, or cancellation of any of the above insurance coverage.

b) Indicate that THE REGENTS OF THE UNIVERSITY OF CALIFORNIA has been endorsed as an additional insured for the coverages referred to herein.

c) Include a provision that the coverage will be primary and will not participate with nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the University.

d) Such insurance shall be with insurers with at least an “A+” rating.

e) The insurance policies shall provide that the insurance company shall notify University in writing at least thirty (30) calendar days in advance if Supplier’s insurance coverage is to be canceled or materially altered so as not to comply with the requirements of this Agreement.

27.3 Supplier agrees to cooperate in good faith with University in the underwriting process for obtaining additional insurance coverage in excess of the coverage limits identified above, and/or in obtaining other insurance as agreed to by Supplier and University. Supplier agrees to use commercially reasonable efforts in cooperating with and providing information to insurance underwriters identified by University.

28. CONFIDENTIALITY

28.1 Each party acknowledges that certain information that it shall acquire from the other is of a special and unique character and constitutes Confidential Information.

28.2 The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However: (a) either
party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena).

28.3 HIPAA Compliance.

a) Background. In connection with the use of the Services provided by Supplier hereunder, University may disclose to Supplier certain patient Data, including Protected Health Information (“PHI”) (which, for purpose of this Agreement, shall include Electronic Protected Health Information), that is subject to protection under the Standards for Privacy of Individually-Identifiable Health Information (“Privacy Rule”) and the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”), collectively set forth at 45 CFR Parts 160, 162 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (the “Act”). The Act, the Privacy Rule and the Security Rule are collectively referred to herein as HIPAA. Supplier and University further agree that any and all such PHI transmitted pursuant to this Agreement shall be deemed to be Confidential Information of University which is subject to HIPAA, applicable state and federal confidentiality and security laws, and University policies.

b) Business Associate Agreement. The parties agree that all PHI that Supplier receives or otherwise has access to pursuant to this Agreement is subject to the terms and conditions of the Business Associate Agreement, attached hereto as Exhibit [ENTER APPROPRIATE EXHIBIT LETTER HERE].

c) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA and all applicable federal and California statutes and regulations governing confidentiality and privacy.

28.4 Nothing in this Agreement shall in any way limit the ability of University to comply with any laws or legal process concerning disclosures by public entities. Supplier acknowledges that any responses, materials, correspondence, documents or other information provided to University are subject to applicable state and federal law, including the California Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

28.5 Nothing in this Agreement shall in any way limit the ability of University to comply with any laws or legal process concerning disclosures by public entities. Supplier acknowledges that any responses, materials, correspondence, documents or other information provided to University are subject to applicable state and federal law, including the California Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.
29. **PROTECTED INFORMATION**

During the course of this Agreement, should Supplier come into possession of any Protected Information, Supplier may not disclose this information to any Third Party under any circumstances.

30. **AUDIT**

30.1 Supplier is responsible for keeping accurate records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement.

30.2 Supplier agrees that University or its authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. Supplier shall make available to University or its representative all such records and documents for audit on Supplier’s premises during regular business hours within ten (10) business days of a written request for availability. Supplier agrees to either: (a) allow University to make and retain copies of those documents useful for documenting the audit activity and results; or (b) sequester the original or copies of those documents which University identifies for later access by University.

30.3 Supplier further agrees to disclose to University within ninety (90) calendar days of receipt any independent auditors’ reports which bear directly on the performance or administration of this Agreement.

30.4 The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of five (5) years after its termination.

30.5 University’s right to audit shall also apply to agents and subcontractors hired by Supplier for the purpose of fulfilling Supplier’s obligations under this Agreement.

30.6 In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, University may recoup the costs of the audit work from Supplier.

31. **DISPUTE RESOLUTION**

31.1 Designated Supplier and University Project Managers shall meet as often as is reasonably required to review the performance of the parties under this Agreement and to resolve any disputes.

31.2 If a dispute arises and these representatives are unable to resolve the dispute within ten (10) business days, then the dispute will be escalated to an executive level
representative of each party with the authority to resolve such matters. Supplier and University executives must meet to resolve any disputes.

31.3 This article does not prohibit a party from seeking judicial relief at any time.

31.4 Supplier shall continue performance of obligations under this Agreement while resolving any outstanding invoices or disputes.

32. **JOINT DRAFTING**

SUPPLIER AND UNIVERSITY AGREE THAT THE TERMS OF THIS AGREEMENT WERE MUTUALLY NEGOTIATED, AND ACKNOWLEDGE THAT EACH HAS BEEN ADVISED BY THEIR RESPECTIVE ATTORNEYS REGARDING THE TERMS, EFFECTS AND CONSEQUENCES OF THE AGREEMENT. ACCORDINGLY, SUPPLIER AND UNIVERSITY AGREE THAT THIS AGREEMENT SHALL NOT BE CONSTRUED AS HAVING BEEN DRAFTED SOLELY BY OR ON BEHALF OF EITHER PARTY.

33. **ASSIGNMENT AND SUBCONTRACTING**

33.1 This Agreement shall be binding on the parties and their successors (through merger, acquisition or other process) and permitted assigns. Neither party may assign, delegate or otherwise transfer its obligations or rights under this Agreement to a Third Party without the prior written consent of the other party.

33.2 Any subcontractors or other Third Parties at any tier used to help fulfill Supplier’s obligations under this Agreement must be obligated to comply with the same terms and conditions provided herein.

33.3 Regardless of whether or not Supplier uses subcontractors or other Third Parties to help fulfill Supplier’s obligations under this Agreement, Supplier remains solely and directly responsible to University for fulfillment of Supplier’s obligations under this agreement.

34. **GOVERNING LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, excluding its conflicts of laws provisions. Any dispute, claims, demands or actions arising out of or in relation to this Agreement, or the interpretation, making, performance, breach or termination thereof shall be brought in and resolved by the Superior Court of the County of [COUNTY NAME] in [CITY NAME], California or in the Federal District Court that has jurisdiction over [CITY NAME], California.

35. **NOTICES**
35.1 All notices, requests, consents, approvals, or authorizations in connection with this Agreement (collectively, “Notices”) must be given in writing, sent by personal delivery, messenger, overnight delivery service, or the United States mail, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

If to Supplier:
[SUPPLIER NAME]
[STREET ADDRESS], [CITY], [STATE] [ZIP CODE]
Attention: [POSITION TITLE]

If to University:
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
[STREET ADDRESS]
[CITY], [STATE] [ZIP CODE]
Attention: [POSITION TITLE]

35.2 All Notices sent in accordance with the foregoing shall be deemed received by the intended recipient: (a) upon personal delivery; or (b) one (1) business day following deposit with an overnight courier service submitted in time for next day delivery.

35.3 Either party may change its notice contact information above by written notice to the other party.

36. SEVERABILITY

36.1 The terms of this Agreement are severable. If any provision of this Agreement, or any portion thereof, is declared by a court of competent jurisdiction to be illegal, void, invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Agreement will continue in full force and effect for the same purpose.

36.2 In the event that any provision shall be held to be illegal, void, invalid or unenforceable, that provision shall in good faith be renegotiated to reflect as closely as possible the intent of the original provisions of this Agreement in a manner that is valid and enforceable.

37. WAIVER

37.1 No waiver of any right or remedy under this Agreement shall be effective unless such waiver is in writing signed by the performing or non-breaching party.

37.2 The waiver of any performance required under this Agreement or of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent failure to perform or breach of the same or any other provision of this Agreement.
37.3 The delay or omission by either party to exercise any right or remedy under this Agreement shall not be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

38. **EQUITABLE RELIEF**

Supplier acknowledges and agrees that a breach of the provisions of Paragraphs [insert] of this Agreement would cause the University to suffer irreparable damage that could not be adequately remedied by an action at law. Accordingly, the Supplier agrees that University shall have the right to specific performance of the provisions of Paragraphs [insert] without posting of a bond or other security, to enjoin a breach or attempted breach of the provisions thereof, such right being in addition to all other rights and remedies that are available to University at law, in equity, or otherwise.

Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances permit.

39. **FORCE MAJEURE**

Neither party shall be liable to the other for failure or delay of performance hereunder due to causes beyond its reasonable control. Such delays include, but are not limited to, earthquake, flood, storm, fire, epidemics, acts of government, governmental agencies or officers, war, riots, or civil disturbances. The non-performing party will promptly notify the other party in writing of an event of force majeure, the expected duration of the event, and its anticipated effect on the ability of the party to perform its obligations, and make reasonable effort to remedy the event of force majeure in a timely fashion.

The performing party may terminate or suspend its performance under this Agreement if the non-performing party fails to perform its obligations under this Agreement for more than **fifteen (15) consecutive calendar days**. University’s payment obligations shall be suspended automatically if it is denied access to the Services for more than **five (5) hours** in any **twenty-four (24) hour** period.

40. **COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Each party shall receive a duplicate original of the counterpart copy or copies executed by it. For purposes hereof, a facsimile or emailed copy of this Agreement, including the signature pages hereto, shall be deemed an original, and each party agrees that it will not contest the validity of the execution of this Agreement solely on the basis of any signature being a facsimile or electronic transmission. Notwithstanding the foregoing, the parties shall each deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof. If this Agreement is executed in counterparts, no signatory hereto shall
be bound by this Agreement until all parties have executed a counterpart of this Agreement.

41. **RELATIONSHIP BETWEEN THE PARTIES**

The Parties intend to create an independent contractor relationship and nothing contained in this Agreement shall be construed to make either University or Supplier partners, joint venturers, principals, agents or employees of the other. No officer, director, employee, affiliate, agent or subcontractor retained by Supplier to perform work on University’s behalf under this Agreement shall be deemed to be an employee or agent of University. Neither Party shall have any right, power or authority, express or implied, to bind the other.

42. **HEADINGS**

The section headings in this Agreement are inserted for convenience only, are not substantive, and shall not be interpreted to define, describe, modify or otherwise limit the interpretation or scope of the provision under the section heading or of the Agreement as a whole.

43. **ENTIRE AGREEMENT**

This Agreement, together with all of the incorporated exhibits, schedules, attachments, and proposals and addenda, constitutes the entire, final and exclusive Agreement between the parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to this Agreement or any amendments based on course of dealing, waiver, release, estoppel or other similar legal theory. No click-through, or other end user terms and conditions or agreements (“Additional Terms”) provided with any Services or products hereunder shall be binding on University or its End Users, even if use of such Services or products requires an affirmative “acceptance” of those Additional Terms before access is permitted. All such Additional Terms shall be of no force and effect and shall be deemed rejected by University in their entirety. Any amendment or modification to this Agreement shall be effective only if in writing and signed by duly authorized representatives of both Supplier and University.

The authorized signatory from each party has read the Agreement, understands it and is authorized to bind his/her organization. This Agreement becomes binding when signed by the authorized signatory of both parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.
ARTICLE 1 – PROTECTED INFORMATION

Contractor acknowledges that its performance of Services under this Agreement may involve access to confidential University information including, but not limited to, personally-identifiable information, student records, protected health information, or individual financial information (collectively, “Protected Information”) that is subject to state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); and the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of Part 164). Contractor agrees to comply with all applicable federal and state laws restricting the access, use and disclosure of Protected Information. Contractor agrees to include all of the terms and conditions contained in this Appendix in all subcontractor or agency contracts providing services under this Agreement.

ARTICLE 2 – COMPLIANCE WITH FAIR INFORMATION PRACTICE PRINCIPLES

With respect to the University’s Protected Information, and in compliance with all applicable laws and regulations, Contractor shall comply in all respects reasonably pertinent to the Agreement with the Fair Information Practice Principles, as defined by the U.S. Federal Trade Commission (http://www.ftc.gov/reports/privacy3/fairinfo.shtm). Such principles would typically require Contractor to have a privacy policy, and, if collecting Protected Information electronically from individuals on behalf of the University, a prominently-posted privacy statement or notice in conformance with such principles (the University’s sample Privacy Statement for websites is available at http://www.ucop.edu/irc/services/documents/sampleprivacystatement.doc). Contractor also agrees, to the extent applicable to the Agreement, to comply with the University’s Business and Finance Bulletin IS-2, Inventory, Classification, and Release of University Electronic Information (http://www.ucop.edu/ucophome/policies/bfb/is2.pdf), and IS-3, Electronic Information Security (http://www.ucop.edu/ucophome/policies/bfb/is3.pdf).

ARTICLE 3 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF PROTECTED INFORMATION

Contractor agrees to hold the University’s Protected Information, and any information derived from such information, in strictest confidence. Contractor shall not access, use or disclose Protected Information except as permitted or required by the Agreement or as otherwise authorized in writing by University, or applicable laws. If required by a court of competent jurisdiction or an administrative body to disclose Protected Information, Contractor will notify University in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give University an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so). Any transmission, transportation or storage of Protected Information outside the United States is prohibited except on prior written authorization by the University.

ARTICLE 4 – SAFEGUARD STANDARD

Contractor agrees to protect the privacy and security of Protected Information according to all applicable laws and regulations, by commercially-acceptable standards, and no less rigorously than it protects its own
confidential information, but in no case less than reasonable care. Contractor shall implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Protected Information. All Protected Information stored on portable devices or media must be encrypted in accordance with the Federal Information Processing Standards (FIPS) Publication 140-2. Contractor shall ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities while Contractor has responsibility for the Protected Information under the terms of this Appendix. Prior to execution of the Agreement, and periodically thereafter (no more frequently than annually) at the University’s request, Contractor will provide assurance, in the form of a third-party audit report or other documentation acceptable to the University (the Shared Assessments® tools http://www.sharedassessments.org/, or similar, are acceptable), demonstrating that appropriate information security safeguards and controls are in place.

ARTICLE 5 – RETURN OR DESTRUCTION OF PROTECTED INFORMATION

Within 30 days of the termination, cancellation, expiration or other conclusion of the Agreement, Contractor shall return the Protected Information to University unless University requests in writing that such data be destroyed. This provision shall also apply to all Protected Information that is in the possession of subcontractors or agents of Contractor. Such destruction shall be accomplished by “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88. Contractor shall certify in writing to University that such return or destruction has been completed.

ARTICLE 6 – BREACHES OF PROTECTED INFORMATION

A. Definition. For purposes of this article, a “Breach” has the meaning given to it under relevant California or federal law, for example, California Civil Code Section 1798.29, California Health and Safety Code Section 1280.15, etc.

B. Reporting of Breach: Contractor shall report any confirmed or suspected Breach to University immediately upon discovery, both orally and in writing, but in no event more than two (2) business days after Contractor reasonably believes a Breach has or may have occurred. Contractor’s report shall identify: (i) the nature of the unauthorized access, use or disclosure, (ii) the Protected Information accessed, used or disclosed, (iii) the person(s) who accessed, used and disclosed and/or received Protected Information (if known), (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by University. In the event of a suspected Breach, Contractor shall keep the University informed regularly of the progress of its investigation until the uncertainty is resolved.

C. Coordination of Breach Response Activities: In the event of a Breach, Contractor will:

1. Promptly (within 2 business days) designate a contact person to whom the University will direct inquiries, and who will communicate Contractor responses to University inquiries;
2. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore University service(s) as directed by the University, and undertake appropriate response activities;
3. Provide status reports to the University on Breach response activities, either on a daily basis or a frequency approved by the University;
4. Coordinate all media, law enforcement, or other Breach notifications with the University in advance of such notification(s), unless expressly prohibited by law;
5. Make all reasonable efforts to assist and cooperate with the University in its Breach response efforts; and
6. Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in University-initiated meetings and/or conference calls regarding the Breach.
D. Costs Arising from Breach. In the event of a Breach, Contractor agrees to promptly reimburse all costs to the University arising from such Breach, including but not limited to costs of notification of individuals, establishing and operating call center(s), credit monitoring and/or identity restoration services, time of University personnel responding to Breach, civil or criminal penalties levied against the University, attorneys fees, court costs, etc. Any Breach may be grounds for immediate termination of this Agreement by the University.

ARTICLE 7 – EXAMINATION OF RECORDS

University and, if the applicable law, contract or grant so provides, the other contracting party or grantor (and if that be the United States, or an agency or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of Contractor involving transactions and work related to this Appendix until the expiration of five years after final payment hereunder. Contractor shall retain project records for a period of five years from the date of final payment.

ARTICLE 8 – ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Contractor shall make itself and any employees, subcontractors, or agents assisting Contractor in the performance of its obligations under the Agreement available to University at no cost to University to testify as witnesses, or otherwise, in the event of an unauthorized disclosure caused by contractor that results in litigation or administrative proceedings against University, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy and arising out of this Appendix.

ARTICLE 9 – NO THIRD-PARTY RIGHTS

Nothing in this Appendix is intended to make any person or entity that is not signatory to the Agreement a third-party beneficiary of any right created by this Appendix or by operation of law.

ARTICLE 10 – ATTORNEY’S FEES

In any action brought by a party to enforce the terms of this Appendix, the prevailing party shall be entitled to reasonable attorney’s fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by in-house counsel shall be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

ARTICLE 11 – INDEMNITY

Contractor shall indemnify, defend and hold University (and its officers, directors, agents and employees) harmless from all lawsuits, claims, liabilities, damages, settlements, or judgments, including University’s costs and attorney fees, which arise as a result of Contractor’s negligent acts or omissions or willful misconduct.

ARTICLE 12 – SURVIVAL

The terms and conditions set forth in this Appendix shall survive termination of the Agreement between the parties. If Contractor is unable to return or destroy the University’s Protected Information in accordance with Article 6, then this Appendix, in its entirety, shall survive the Agreement until such time as Contractor does return or destroy the Protected Information.